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NO._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

IN RE: ALIEN CHILDREN
EDUCATION LITIGATION

STATE OF TEXAS AND
TEXAS EDUCATION AGENCY
Appellants

VS.

UNITED STATES
Intervenor-Appellee

AND

CERTAIN NAMED AND UNNAMED
UNDOCUMENTED ALIEN CHILDREN
Appellees

On Appeal From The United States Court Of
Appeals For The Fifth Circuit

JURISDICTIONAL STATEMENT

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Attorneys for Appellants

QUESTIONS PRESENTED

1. Whether aliens unlawfully present in the Uni States are "persons within a state's jurisdiction" that phrase is used in the equal protection clause of Fourteenth Amendment.

2. Whether a state is obligated to provide a tuiti free public education to children unlawfully present the United States.

PARTIES

The parties are the same as in the court below.

SUBJECT INDEX

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Parties .....

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554 (2d Cir. 1975), *cert. den.*, 424 U.S. 910 (1976) .....

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Other

Karst, *The Fifth Amendment's Guarantee of Equal Pr*
55 N.C.L.Rev. 541 (1977) .....

Preliminary Report of the Domestic Council on
pp. 40, 42, 110 (1976), U.S. Govt. Printing Off
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7 C.F.R. §273.4 .....

42 C.F.R. §405.103(a)4(ii) .....

42 C.F.R. §405.205(b) .....

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8 U.S.C. §1324 .....

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42 U.S.C. §1983 .....

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Texas Education Code, Section 21.031(a)-(c) ...

U.S.CONST.
Tenth Amendment .....

Fourteenth Amendment .....

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AND

CERTAIN NAMED AND U
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On Appeal From The United S
Appeals For The Fifth

JURISDICTIONAL STA

TO THE HONORABLE JUDGES

NOW COME the State of Texas ar
tion Agency, by and through their
Richard Arnett, Assistant Attorney
and file their jurisdictional staten
captioned cause.

JURISDICT

On July 21, 1980, the United S
the Southern District of Tex
issued its memorandum opinion
declaring unconstitutional Sect
Texas Education Code and enjo
said statute. The district court'
upon 28 U.S.C. §1343(3) and (
U.S.C. §2000d and the opinion
Multidistrict Litigation en
1979. 482 F.Supp. 326 (Judicia
Litigation 1979). The matter
United States Court of Appeals
80-1807, which Honorable Court
district court on February 23,
was filed in the Court of Appea

This Court has jurisdiction
§1254(2).

STATUTORY PI

TEX.EDUC.CODE §21.03

(a) All children who are ci
States or legally admitted
over the age of five years
21 years on the first day
scholastic year shall be en
of the Available School Fu

(b) Every child in this sta
the United States or a le
and who is over the age
over the age of 21 years
September of the year in
sought shall be permitted
free schools of the district

in which his parent, gu
having lawful control of
he applies for admission.

(c) The board of truste
school district of this sta
public free schools of the
all persons who are eithe
States or legally admitt
over five and not over
beginning of the scholas
or his parent, guardian o
control resides within th

The Fourteenth Amendm
Constitution provides in par
All persons born or nat
States, and subject to t
are citizens of the Uni
State wherein they resid
or enforce any law wh
privileges or immuniti
United States; nor shall
person of life, liberty, o
process of law; nor den
its jurisdiction the equa

STATEMEN

Pursuant to the order in *I*
tion Litigation, 482 F.Sup
Multidistrict Litigation 197
tion of common questions
tions filed in the four distr
tions essentially involve the
21.031 of the Texas Educat
titlement to state educatio
legally admitted aliens .
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agreement of the parties
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Following the interv
America, the district c
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the Texas Education Co
clause of the Fourteen
States Constitution
thereof. These allegatic
the Declaratory Judgm
2202, 42 U.S.C. §198
district court issued its
1980, holding that Sect
equal protection clause
and enjoining its applic
state funding for the ed
of their status unde
law." The opinion of th
F.Supp. 544 (S.D.Tex.

Appellants filed notic
peals for the Fifth Circu
stay from the district
plication of Appellants,
Circuit Court of Appe
Mr. Justice Powell on S
(1980), 101 S.Ct. 12 (19

The Court of Appeals
affirmed the district cou
of appeal was filed by A
amended notice of app
March 13, 1981.

Another case involvi
questions has been do
80-1538, *Plyler v. Doe.*
case are reported at 4
and 628 F.2d 448 (5th
that the instant case be

It is difficult to imagi
this Court's review than
equal protection clause
aliens. The obvious imp
question was appropriat
Justice Powell on the
herein. 101 S.Ct. 12 (19
comes to the Court on a
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support their positions.

The ramifications of t
cause and *Plyler v. Doe*
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children. The entitleme
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regulations currently pr
documented aliens with
and Aid to Families Wit
§233.50. The latter regu
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and Supplemental S
42 U.S.C. §1382c(a)(1)(B)
the entitlement of undoc
U.S.C. §1395i-2, 42 C.F
U.S.C. §1395o, 42 C.F.
some circumstances, soc
§426a(a)(4). While the
regulations is not an issu
the applicability of the
documented aliens will c
states to implement fede
power of the federal ag
Karst, *The Fifth Amend*
tection, 55 N.C.L.Rev. 54
of the federal statutory
Mathews v. Diaz, 426 U.
tions adopted by the Dep

Department of He
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The application
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> Legislature
> Judiciary. . .

[1]Indeed, the decis
counter to federal int
migration. *See, Prel*
legal Aliens, pp. 40, 4
0-241-089/1020 (reco
ment). Further, the
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Any rule of
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Mathews v. Diaz
the federal gove
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Diaz, supra, at 8
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[2]The scope of fede
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[3]*De Canas v. Bica,*
357 U.S. 185 (1957);
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1975), *cert. den.*, 424
479 F.Supp. 519 (D.
migration and Nat. S

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[4]Various e
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an issue striking at the heart of the American system of federalism.

The differentiation between permissible state and federal interests expressed in *Mathews v. Diaz, supra,* and *Nyquist v. Mauclet,* 432 U.S. 1 (1977), is not applicable to aliens whose presence is not authorized by federal law. The source of the exclusive federal power to control immigration being implied, *The Chinese Exclusion Case,* 130 U.S. 581, 604 (1889), that power cannot be construed to justify the assertion of interests by the federal government where those interests are denied to states unless the assertion of such interests by a state conflicts with the "determination to admit [an] alien ...." *Foley v. Connelie, supra,* at 295; U.S.CONST., Tenth Amendment. Thus, in the context of illegal or undocumented aliens, the various states are entitled to assert the same self-protective interests which this Court has allowed to the federal government.

Finally, the appeal presents the question of whether education is a fundamental right, the deprivation of which must be supported by compelling state interests. The district court held in the affirmative in this regard. 501 F.Supp. at 564. *But see, Ambach v. Norwick,* 441 U.S. 68, 77, n.7 (1979). This Court is thus presented with the sequel to *San Antonio School District v. Rodriguez,* 411 U.S. 1 (1973).

The injunction issued by the district court constituted an abuse of its discretion. Undocumented or illegal aliens are not "persons within a state's jurisdiction" under the Fourteenth Amendment. Assuming otherwise *arguendo,* the state has articulated sufficient basis to support the statute. *Dandridge v. Williams,* 397 U.S. 471 (1970). Accordingly, Section 21.031 of the Texas Education Code does not violate the United States Constitution, and its application may not be enjoined.

Further elaboration is unnecessary to demonstrate the importance and breadth of the issues presented by this appeal. The issues go beyond the relationship of the various states to persons whose presence within

such states is illegal; they involve the basic structure
federal constitutional power and responsibility. T
issues are of major constitutional significance and wa
rant review by this Court.

Respectfully submitted,

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